

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-03-0103 FCD EFB P

vs.

KAMALJIT SINGH KHERA,

Movant.

ORDER

Movant is a federal prisoner proceeding through counsel with a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Respondent filed an answer to the § 2255 motion on May 2, 2011, and movant filed a reply on May 30, 2011.

On June 28, 2011, respondent filed a “response to defendant’s reply memorandum.” Therein, respondent elaborates on his answer and responds to several points raised in movant’s reply. On that same date, movant filed a motion to strike respondent’s “response.” He argues that a response to a reply is not contemplated by Rule 4(b) of the Rules Governing Section 2255 Proceedings and should not be allowed in this case. Dckt. 390 at 2. Movant complains that “if the government is permitted to file pleadings at will, there will be no end to this litigation.” *Id.* He questions whether he will be permitted to file a responsive document in the event the court does not strike respondent’s “response.” *Id.* at 3.

1 Rule 4(b) of the rules governing § 2255 motions provides that:

2 the Judge who receives the motion must promptly examine it. If it
3 plainly appears from the motion, any attached exhibits, and the
4 record of prior proceedings that the moving party is not entitled to
5 relief, the judge must dismiss the motion and direct the clerk to
6 notify the moving party. If the motion is not dismissed, the judge
must order the United States attorney to file an answer, motion, or
other response within a fixed time, or to take other action the judge
may order.

7 Pursuant to this rule, which provides that the court may order briefing or other action it deems
8 appropriate to the circumstances, the court will accept respondent's June 28, 2011 filing and will
9 consider it in connection with the pending § 2255 motion. Movant will be permitted to file a
10 responsive document within fourteen days. No further documents shall be filed in this action.

11 Accordingly, IT IS ORDERED that:

12 1. Movant's June 28, 2011 motion "to Strike the Government's 'Reply Memorandum'"
13 is denied; and

14 2. Within fourteen days from the date of this order, movant may, but is not required to
15 file a brief responding to the document filed by respondent on June 28, 2011. No further
16 documents are permitted to be filed in connection with movant's pending § 2255 motion.

17 DATED: January 12, 2012.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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